

REMARKS/ARGUMENTS

Claims 1-29, 34, 35 and 41-57 are pending herein, claims 1 and 53 being independent.

Claims 1 and 53 are amended herein to more particularly point out the invention presented therein.

In the Final Office Action, the Examiner rejected all claims under 35 U.S.C. § 103(a) as obvious over United States Patent No. 3,581,072 (Nymeyer) in view of United States Patent No. 6,230,146 (Alaia, *et al.*). The applicant responded thereto by arguing against the pertinence of the references to the claims and making no amendment. The Examiner issued an Advisory Action, in which it was indicated that the Examiner believed that the arguments were directed to a feature of the invention not present in the claims. While the applicant believes that the feature was present in the claims, the applicant hereby amends the claims to more particularly point out this feature of the invention.

Specifically, claims 1 and 53, the sole independent claims herein, have been amended to recite that the auction leader, and only the auction leader, is permitted to make one final bid after the close of the auction to all other bidders. In this fashion, the auction leader is given the opportunity to put in a new bid after the close of the auction, thereby protecting the auction leader from being “sniped” by a last second bidder who places a marginally higher bid when it is too late for the auction leader to counter it. This feature has been argued previously, and those arguments are re-presented below, for the Examiner’s convenience.

For the reasons set forth in more detail below, therefore, it is respectfully submitted that the claims are allowable over the references applied by the Examiner in the Final Office Action.

The following summary of the invention is based on the specification. It is provided only for the convenience of the Examiner as part of the discussion presented herein, and is not intended to argue limitations which are unclaimed.

The invention is directed to a method and apparatus for conducting an auction in which the auction is set to end at a predetermined time. In existing bidding systems, such as on e-Bay, bidding is often suppressed by bidders who wait until the last minute (or even the last second) to place a bid, thereby resulting in a last minute flurry of bidding, which tends to keep the winning bid lower than it would be if the last-minute bidders placed their higher bids earlier. While this is favored by the potential buyers, sellers would prefer to have higher prices. To encourage early, and higher, bidding, the invention provides for naming one of the bidders as the “auction leader” as a function of that bidder having placed the highest bid and maintaining the highest bid for the longest period of time. In this fashion, a bidder who, in one hypothetical example, places the first (and only) bid is named the auction leader if no one else bids until one minute prior to the scheduled termination of the auction. Under existing systems, the last minute bidder may “snipe” the bid by placing a nominally higher bid just moments before the scheduled close of the auction, depriving the first bidder, who had no competition until it was too late to re-bid and secure the item. This deprives the seller of the opportunity to reap the highest, and possibly fairest, price for the item.

According to the invention, this scenario is avoided, since the auction leader is given the opportunity to outbid the “sniper” after the scheduled close of the auction. No one else is permitted to bid after the scheduled close, except for the auction leader. There is thus an incentive to be named as auction leader, to be afforded this additional opportunity to bid. This feature is nowhere found in the prior art.

Nymeyer has been discussed in response to the prior Office Actions, and it has been pointed out that Nymeyer fails to teach or suggest this feature of the claimed invention. Nymeyer teaches an auction market computation system for matching orders and prices for

fungible goods, such as shares of stocks. The described system fails to teach naming an auction leader or providing an opportunity to allow an auction leader, or any other bidder, to bid after the close of the auction.

The Examiner, in the pending Office Action, has acknowledged this shortcoming in Nymeyer, and applied Alaia, *et al.* to attempt to overcome this deficiency. Alaia, *et al.*, however, do not fairly teach or suggest this feature of the invention.

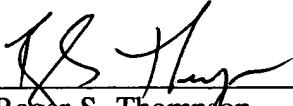
Alaia, *et al.* teach a method and system for controlling the closing time of an electronic auction featuring multiple lots. It expressly teaches the extension of the closing time of one auction where another auction has been extended, thereby causing a logjam in closing times of the two auctions. Alaia, *et al.* expressly teach that the extension applies to “all bidders” (see, Abstract, lines 15-17: “This allows the possibility for a lot to be returned[ed] to open status for further bidding by *all bidders*.” – emphasis supplied). There is no naming of an auction leader, and no extension of bidding for the *auction leader only*.

Thus, for all these reasons, it is respectfully submitted that the invention as claimed and described is patentably distinct from the references applied by the Examiner, either alone or in combination. Therefore, early and favorable action is respectfully solicited.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By 

Roger S. Thompson

Reg. No. 29,594

551 Fifth Avenue, Suite 1210

New York, New York 10176

(212) 687-2770

Dated: December 8, 2005